[illegible] OF RECORD.

[illegible] COURT OF THE UNITED STATES.

[illegible] 202

[illegible] BOARD OF SUPERVISORS OF POWSHIEK COUNTY, IOWA,

vs.

[illegible] ELL CLARK DURANT.

[illegible] THE UNITED STATES FOR THE

[illegible]

SUPREME COURT OF THE UNITED STATES.

No. 429.

THE BOARD OF SUPERVISORS OF POWSHIEK COUNTY, IOWA,

vs.

THE UNITED STATES, EX REL. CLARK DURANT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

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1 Pleas in the circuit court of the United States of America for the district of Iowa, held at the court-room in the city of Des Moines in the district aforesaid, before the Honorable Samuel F. Miller, one of the justices of the Supreme Court of the United States, presiding, on the 27th day of October, at the regular term of said court, in the year of our Lord one thousand eight hundred and sixty-eight.

W. G. WOODWARD, *Clerk.*

THE UNITED STATES, EX REL. CLARK DURANT,
vs.
THE BOARD OF SUPERVISORS OF POWESHEIK County, Iowa. } Mandamus.

Be it remembered that on the 16th day of October, A. D. 1867, came the United States, ex rel. Clark Durant, by Grant, his att'y,
2 and filed in the office of the circuit court for the district of Iowa, at Des Moines in said district, his petition for a mandamus against the board of supervisors of Washington County, Iowa, in words and figures following, to wit:

In United States circuit court for the district of Iowa.—October term, A. D. 1868.

THE UNITED STAES, ON THE RELATION OF Clark Durant,
vs.
THE BOARD OF SUPERVISORS OF POWESHEIK County, Iowa. } Petition for mandamus.

To the judge of the circuit court of the United States for the district of Iowa:

Clark Durant, who avers that he is a citizen of the State of New York, comes and gives this court to be informed that on the 17" day of May, A. D. 1867, by the judgment and consideration of this court, on due process of law, he recovered judgment against Powesheik County,
3 for the sum of $4,507 80, and costs taxed at $114 91, and 7 % interest from the date of said judgment.

That execution has been issued upon said judgment, and returned "no property found." That the county of Powesheik has no property out of which said judgment can be made. That by the law of the State of Iowa, the public and private property of such corporation is exempt from execution. That Powesheik County is a corporation created by the law, and a citizen of Iowa.

That the business of said corporation is managed by a board of supervisors, who manage its financial affairs, cause its taxes to be levied and collected, and whose duty it is to provide for the payment of all judgments rendered against it.

That said judment was for interest on a certain bond executed by the county of Powesheik, in the year 1858, and issued in payment for stock in and in aid to the Mississippi and Missouri Railroad Company, made under a vote of the majority of the electors of said county. The
4 result of which vote has been duly entered at large upon the minute book of said county, and by which the county judge of Powesheik county was authorized to subscribe to the capital stock of the said railroad company the sum of one hundred thousand dollars, and issue the bonds of said county to that amount, bearing interest at

the rate of ten per cent. per annum, payable on the 1st days of January and July, in each year, for which interest cupons were annexed to said bonds. That by the provisions of said vote and by the laws of the State, it became and was the duty of the proper officers of said county to annually levy a tax of not less than one mill on the dollar, and not exceeding one per cent. upon the valuation of the taxable property of said county, untill said debt should be paid, and pay therewith the interest upon said bonds, and to provide for the ultimate redemption of the principal thereof when the same should fall due.

That prior to the year A. D. 1860 such duty devolved upon the county judge of said county.

That since 1860, by force of an act of the legislature of said
5 State of Iowa, such duty has devolved upon the board of supervisors of said county. That the interest upon said bonds has not been paid since 1859.

That it is further provided by the general laws of the said State of Iowa that, when a judgment has been rendered against a civil corporation, a tax shall be levied, as early as practicable, sufficient to pay off the said judgment, with interest and costs.

That the relator has made a demand upon the board of supervisors of Powesheik County to levy a tax sufficient to pay off said judgment, and, although ample time has elapsed, they have refused and neglected so to do.

That the valuation of the taxable property of said county is not less than four millions of dollars.

That the relator is without other adequate remedy at law, and he prays that a writ of mandamus may be issued from this court, directed to the board of supervisors of Poweshiek County, Iowa, commanding them forthwith to levy and collect a specific tax upon the taxable
6 property of Scott County sufficient to pay said judgment of $4,507 80 and cost, taxed at $114 91, and interest at the rate of seven (7) per cent. per annum from the 17" day of May, A. D. 1867, and the costs of this proceeding, and, when collected, to pay and satisfy the same therewith, and that such other order may be had in the premises as justice may require, &c.

CLARK DURANT.

STATE OF IOWA, *Scott County, ss:*

I, J. Grant, do state on oath that I am relator's att'y; that I have a personal knowledge of the facts stated in the foregoing information; and that the same are true, as I verily believe.

JAMES GRANT.

Subscribed and sworn to by J. Grant, before me and in my presence, this 13" day of Sept., A. D. 1867.

[L. S.]

S. F. SMITH,
N. P. Scott Co., Iowa.

7 And on this day, to wit, the 27th day of October, A. D. 1867, at the October term of said court, in the record of the proceeding thereof in said entitled cause is the following entry, to wit:

THE UNITED STATES, EX. REL. CLARK DURANT,
vs.
THE BOARD OF SUPERVISORS OF POWESHEIK County, Iowa. } Mandamus.

This cause now coming on to be heard, Grant, for the plaintiff, files

his infirmation for a writ of mandamus, and the court doth order that the alternative writ issue, as asked, returnable to the next term of this court.

8 The United States of America to the board of supervisors of Powesheik County, State of Iowa:

Whereas it has been represented to our circuit court of the United States for the district of Iowa that Clark Durant is a citizen of the State of New York, and has given this court to be informed that on the 17" day of May, A. D. 1867, by the judgment and consideration of this court, in due process of law, recovered judgment against Powesheik County for the sum of $4,507^{80}$, and costs taxed at 114^{91}, and 7 % interest from the date of said judgment; that execution has been issued upon said judgment and returned, "No property found;" that the county of Powesheik has no property out of which said judgment can be made; that, by the laws of the State of Iowa, the public and private property of such corporation is exempt from execution; that Powesheik County is a corporation created by the laws, and a citizen of Iowa; that the business of said corporation is managed by a

9 board of supervisors, who manage its financial affairs, cause its taxes to be levied and collected, and whose duty it is to provide for the payment of all judgments recovered against it.

That said judgment was for interest on certain bonds executed by the county of Powesheik in the year 1858, and issued in payment for stock in, and aid to, the Mississippi and Missouri Railroad Company, under a vote of the majority of the electors of said county. The result of such vote has been duly entered at large upon the minute book of said county, and by which the county judge of Powesheik County was authorized to subscribe to the capital stock of the said railroad company the sum of one hundred thousand dollars, and issue the bonds of said county to that amount, bearing interest at the rate of ten per cent. per annum, payable on the 1st days of January and July in each year, for which interest cupons were annexed to said bonds. That by the provisions of said vote and by the laws of this State it became and was the duty of the

10 proper officers of said county to annually levy a tax of not less than one mill on the dollar, and not exceeding one per cent. upon the valuation of the taxable property of said county, until said debt should be paid, and pay therewith the interest upon said bonds, and to provide for the ultimate redemption of the principal thereof, when the same should fall due. That prior to the year A. D. 1860 such duty devolved upon the county judge of said county. That since 1860, by force of an act of the legislature of said State of Iowa, such duty has devolved upon the board of supervisors of said county. That the interest upon said bonds has not been paid since 1859. That it is further provided by the general laws of said State of Iowa that when a judgment has been rendered against a civil corporation a tax shall be levied, as early as practicable, sufficient to pay off the said judgment, with interest and costs.

That the relator has made a demand upon the board of supervisors of said Powesheik County to levy a tax sufficient to pay off said judgment, and altho' ample time has elapsed, they have refused and neg-

11 lected so to do.

That the valuation of said taxable property is not less than four millions of dollars; that the relator is without other adequate remedy in a court of law.

Now, therefore, we being willing that full and speedy justice shall be

done in said premises, do hereby command you, the said board of supervisors of Powesheik County, State of Iowa, to forthwith levy a specific tax upon all the taxable property of Powesheik County sufficient to pay said judgment of $4,507^{80}$, and costs, taxed at 114^{91}, and interest, at the rate of seven (7) per cent. per annum, from the 17″ day of May, A. D. 1867, and the costs of this proceeding; and when collected, to pay and satisfy the same herewith, or that you appear before said circuit court, at Des Moines, Iowa, at the court-house in Polk County, on the 17″ day of May, A. D. 1868, to show cause why you refuse so to do.

Witness the Hon. Salmon P. Chase, Chief Justice of our Supreme Court, and the seal of said circuit court, this 24 day of October, A. D 1867.

W. G. WOODWARD, *Clerk.*

12 The writ, of which this is a copy, came into my hands on the 3d day of January, A. D. 1868, and I served the same on the members of the board of supervisors of Powesheik County as follows: On David Vandever, the 18″ day of February, 1868; on L. E. Cardell and Horace R. Boyce, on the 19″ day of said month; on James Marrott, Daniel Dougherty, S. W. Snyder, and Daniel Strong, on the 23 day of February, 1868; on Charles Fisher, Asher Shifflet, D. J. Wherry, and Joseph McDonald, on M. A Malom, A. C. Armstrong, G. J. Morgan, and William, by reading said writ and by delivering a copy of same to each of said members of said board in said county, on the days above mentioned. I also read same and gave a copy to John W. Cheshire, clerk of said board, on the 20 day of February, 1868, in said county; and on the 7″ day of April, 1868, I read said writ and gave the original to Erastus Snow, chairman of said board in said county.

G. W. CLARK,
U. S. Marshal.

Marshal's fees:

Milage	12 00
Service on 16	34
Copies	10 00
	$56 00

13 And afterwards, to wit, on the 13th day of May, A. D. 1868, there was filed in the office of the clerk of said court a return to the alternative writ in words and figures following, to wit:

In the United States circuit court for the district of Iowa.

Return of the board of supervisors of Powesheik County, Iowa, respondent

THE UNITED STATES, ON THE RELATION OF CLARK DURANT,
vs.
THE BOARD OF SUPERVISORS OF POWESHEIK COUNTY, IOWA.

The board of supervisors of Powesheik County, Iowa, for return to the alternative writ of mandamus heretofore issued by said court against them, on application made by the relator, Clark Durant, admit that the relator is a citizen of the State of New York; that on the 17″ day of May, A. D. 1867, by the judgment and consideration of this
14 court, on due process of law, said relator recovered judgment against Powesheik County for the sum of $4,507^{80}$, and costs, taxed at 114^{91}, and 7 % interest from the date of said judgment;

that execution has been issued upon said judgment and returned no property found; that the county of Powesheik has no property out of which said judgment can be made; that by the laws of the State of Iowa, the public and private property of such corporation is exempt from execution; that said Powesheik County is a corporation created by law, and a citizen of the State of Iowa.

That the business of said corporation is managed by a board of [of] supervisors, who manage its financial affairs, and cause its taxes to be levied and collected.

That said judgment was for interest on certain cupons executed by the county of Powesheik, in the year 1858, and issued in payment for stock in and to the Mississippi and Missouri Railroad Company, under a vote of a majority of the electors of said county; that the result of said vote was duly entered on the minute book of said county, and by the terms of which the county judge of Powesheik county was
15 authorized to subscribe to the capital stock of said railroad company the sum of one hundred thousand dollars, and issue the bonds of said county to that amount, bearing interest at the rate of ten per cent. per annum, payable on the 1st day of January and July in each year, for which interest cupons were annexed to said bonds.

That the relator has made a demand upon the board of supervisors of said Powesheik County, to levy a tax sufficient to pay said judgment, and that they have neglected and refused so to do.

Respondent denies that, by the provisions of said vote, or by the laws of Iowa, it became, or was, or is the duty of said board of supervisors, or the proper officers of said county, to annually levy a tax of not less than one mill on the dollar, and not exceeding one per cent. upon the valuation of the taxable property of said county, or any sum whatever, untill said debt should be paid, or to pay therewith the interest on said bonds, or to provide for the ultimate redemption of the principal thereof, when the same should fall due; deny that it is further provided
16 by the general laws of the State of Iowa, when a judgment has been rendered against a civil corporation, a tax shall be levied as early as practicable, sufficient to pay off the said judgment, with interest and cost.

And respondent, for further answer, says that there was no valid law at the time of said vote, authorizing said tax to be voted; that said respondent has no legal right or authority to levy a tax upon the taxable property within said county, according to the provisions of said vote, for the purpose of paying off the interest on said bonds, or the judgment rendered in this court therefor, and that there is no valid law of the State of Iowa authorizing or permitting the levy of a tax for the payment of such judgment.

And for further return the respondent says: On the 14th day of December, A. D. 1864, the district court of Powesheik County, State of Iowa, in a certain action then therein pending, wherein Gideon Meson, Lynch A. Johnson, Robert Taylor, Isaac G. Meson, and John G. McIntire, sr., who sue for themselves and the tax-payers of Powesheik
17 County, Iowa, were plaintiffs, and the Mississippi and Missouri Railroad Company, John M. Talbott, county judge of Powesheik County, and his successors in office; Wm. M. Head, county treasurer Powesheik County, and his successors in office, were defendants; of which said cause, and the parties thereto, the said court then had jurisdiction upon the final hearing thereof, did forever prohibit and perpetually enjoin respondent from levying at any time any tax or taxes whatever upon the taxable property of said county of Powesheik, for the

purpose of raising a fund or funds for the payment of any portion of the principal of said bonds, or for the payment of any portion of the interest cupons attached to said bonds, a copy of which said decree of perpetual injunction is hereto attached and marked Exhibit "A," and made part hereof; that said bonds and the interest cupons thereon are the same refered to in the information of the relator, and said interest cupons are the same upon which the said judgment of the relator was rendered, and respondent further says that said decree of injunction is
18 in full force and effect, and in no wise set aside, reversed, or vacated, and that said respondent cannot, without disregarding and violating the said injunction of said court, and becoming liable for contempt of said court, levy said taxes as in said alternative writ of mandamus commanded.

Wherefore respondent prays the judgment of this court, that the return of respondent herein is valid in law and to be dismissed with their costs herein, and that the court will make such order in the premises as shall be required by right and justice.

ERASTUS SNOW,
President of the Board of Supervisors of Powesheik County, Iowa.

THE STATE OF IOWA, *Polk County, ss:*

Erastus Snow, being first duly sworn, says he is president of the board of supervisors of Powesheik Co., Iowa; that he has heard the foregoing return read, and that the several matters and things therein contained are true as he believes.

ERASTUS SNOW.

Sworn to by the said Erastus Snow, and signed by him in my presence, this 13 day of May, A. D. 1868.

[SEAL.] T. M. HUBBLE,
Notary Public.

19 In the district court of Powesheik County, State of Iowa.—Dec. term, A. D. 1868.

GIDEON MESON *et al.*
vs.
J. M. TALBOTT, COUNTY JUDGE Powesheik County, Iowa, the Mississippi and Missouri R. R. Co., et al. } Final decree.

Be it remembered that at the April term, A. D. 1864, of this court, both parties, plaintiff and defendants, being present in open court, by their attorneys, and consenting thereto, the above-entitled cause was submitted to the court for final hearing and adjudication. And now, to wit, on this 14th day of December, A. D. 1864, it being one of the days of a regular term, the court having fully examined and considered the pleadings filed and evidence adduced by the parties to said cause, finds that the matters, things, and allegtions set forth and contained in plaintiff's are true as therein alledged, and that the county of Powesheik, in the State of Iowa, did, as alledged in said petition, on or about the 26 day of November, A. D. 1858, subscribe for one thousand shares of one hundred dollars each, of the capital stock of the Mississippi and Missouri Railroad Company, and in payment of such subscription
20 did execute and deliver to the said company one hundred bonds

of one thousand dollars each, due and payable on the 1st day of January, A. D. 1878, with interest thereon at the rate of ten per cent. per annum, payable semi-annually, on the first days of January and July of each year, and that for such annual instalments of interest cupons were duly signed and executed, attached to said bonds.

And the court doth further find that said bonds, with the said appended cupons, were executed without warrant or authority of law, and are therefore invalid. The court doth, therefore, think fit, and doth so order and decree, that the injunction, at the commencement of this suit upon the order and allowance of the Hon. Wm. M. Stone, judge of the, 6th judicial district of the State of Iowa, be and the same is hereby made perpetual and binding upon all the parties to this suit, and upon all the successors in office of the said county judge and county treasurer of said county.

And the court doth further order and decree that the said John
21 M. Talbot, county judge of the said county of Powesheik, in the State of Iowa, and all of his successors in office, whose duty it has been since the commencement of this suit, or whose duty it now is or hereafter by law it may be, to levy the taxes upon the taxable property in said county, and the board of supervisors of said county, who are the successors in office of the said county judge for the purpose of levying taxes, be and are hereby perpetually enjoined and restrained from levying at any time any tax or taxes whatever upon said property in said county, for the purpose of raising a fund or funds for the payment of any portion of the principal of said bonds, or for the payment of any portion of the interest cupons attached to said bonds, for the payment of any interest or principal claimed by any person or persons upon any of said bonds, or for the payment of any judgment rendered or to be rendered upon said bonds or interest coupons, and they are enjoined and restrained from [from] drawing, executing, or issuing, or causing
22 to be drawn, executed, or issued, to any person, any order or warrant in favor of any person, or in blank upon the county treasurer of said county, for the payment or with the intent to pay any of said bonds or interest coupons with any funds or moneys whatever that now are or hereafter may be in the treasury of said county.

And the said Wm. M. Head, county treasurer of said county of Powesheik, and whose successors in office, whose duty it has been since the commencement of this suit, and whose duty it now is, or hereafter may be, to collect any or all of the taxes levied or to be levied upon the taxable property in said county, are hereby forever restrained and enjoined from collecting or proceeding to collect any taxes that have been, or hereafter may be, levied for the purpose of paying said bonds on the said interest coupons, and are restrained and enjoined from paying any funds or moneys belonging to said county to any person upon any order or warrant issued or purporting to have been issued by the said county judge or the said board of supervisors of said county, for the pur-
23 pose of paying said bonds or interest coupons, or any portion thereof, or any judgment rendered, or to be rendered thereon; and it is further ordered and decreed that the defendants pay the costs of suit.

WM. LOUGHRIDGE, *Judge.*

24 And on this day, to wit, the 27th day of May, A. D. 1868, in the May term of said court, came said plaintiff, by his attorneys, and filed in said clerk's office a demurrer to the return of the writ of this mandamus in words and figures following, to wit:

25 Circuit court U. S., for the district of Iowa.

U. S., EX. REL. CLARK DURANT,
vs.
THE BOARD OF SUPERVISORS OF POWESHEIK County. } Motion to quash return.

The plaintiff moves the court to quash the return in this case, and to grant peremptory writ—

Because that the writ which denies the provisions of the vote, and sets up that the law does not authorize such a vote, simply denies the law, and is no bar to the writ. The fact that such a vote was made, and such a tax preceded by the vote, is not disputed. It is simply in that respect a denial of the legal effect of the vote, because that part of the return which denies the provisions of the general law is a denial of law, and not of fact.

Because the State injunction and judgment is no bar to the writ.

The plaintiff is no party to the suit in the State court, and is not bound thereby.

Because the State courts have no power or authority by any
26 proceedings to bar the plaintiff's relief in this court.

Because the decree is a violation of the Constitution of the United States, impairing the obligation of the contract thereupon.

GRANT, *for Plf.*

27 And on this day, to wit, the 27th day of May, in the May term of said court, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

THE UNITED STATES, EX. REL. CLARK DURANT,
vs.
THE BOARD OF SUPERVISORS OF POWESHEIK County, Iowa. } Mandamus.

This cause came on to be heard, Grant for the plaintiff, for defendant, upon the argument of the plaintiff's demurrer to the defendants' return to the alternative writ of mandamus. It is ordered and adjudged that said demurrer be sustained, and the defendants abide by the demurrer; and said return being insufficient, it is ordered and adjudged by the court that a peremptory writ issue as prayed for, returnable to the next term of this court, to which time this cause is continued, and that defendants pay the costs of this proceeding.

28 And afterwards, to wit, on the 8th day of June, A. D. 1868, there was issued from the office of the clerk of said court a peremptory writ of mandamus, in words and figures following, to wit:

29 The President of the United States of America to the board of supervisors of Powesheik County, State of Iowa:

Whereas it has been represented to our circuit court of the United States for the district of Iowa, that Clark Durant is a citizen of the State of New York, and has given this court to be informed that on the 17 day of May, A. D. 1867, by the judgment and consideration of this court, in due process of law, he recovered judgment against Powesheik County for the $4,507 80 and costs, taxed at $114 91, and seven per cent. interest from date of said judgment; that execution has been issued upon said judgment, and returned "no property found;" that the county of Powesheik has no property out of which said judgment can be made; that by

the laws of the State of Iowa, the public and private property of such corporation is exempt from execution; that Powesheik County is a corporation created by law, and a citizen of Iowa; that the business of said corporation is managed by a board of supervisors who manage its
30 financial affairs, and cause its taxes to be levied and collected, and whose duty it is to provide for the payment of all judgments recovered against it; that said judgment was for interest on certain bonds executed by the county of Powesheik in the year 1858, and issued for stock in and aid to the Mississippi and Missouri Railroad Company, under a vote of a majority of the electors of said county, the result of which vote has been duly entered at large upon the minute book of said county, and by which the county judge of Powesheik County was authorized to subscribe to the capital stock of the said railroad company the sum of one hundred thousand dollars, and issue the bonds of said county to that amount, bearing interest at the rate of ten per cent. per annum, payable on the 1st day of January and July of each year, for which interest coupons were annexed to said bonds; that by the provisions of said vote, and by the laws of this State, it becomes and was the duty of the proper officers of said county to annually levy a tax of not less than one mill on the dollar, and not exceeding one per
31 cent. upon the valuation of the taxable property of said county, untill said debt shall be paid, and pay therewith the interest upon said bonds, and to provide for the ultimate redemption of the principal thereof, when the same should fall due; that prior to the year A. D. 1860, such duty devolved upon the county judge of said county; that since 1860, by force of an act of the legislature of the State of Iowa, such duty has devolved upon the board of supervisors of said county; that the interest upon said bonds has not been paid since 1859; that it is further provided by the general laws of the State of Iowa, that when a judgment has been rendered against a civil corporation, a tax should be levied as early as practicable to pay off said judgment, with interest and costs; that the relator has made a demand upon the board of supervisors of said Powesheik County to levy a tax sufficient to pay said judgment, and although ample time has elapsed they have refused and neglected so to do; that the valuation of the taxable prop-
32 erty of said county is not less than four millions of dollars; that the relator is without other adequate remedy in a court of law:

Now, therefore, we, being willing that full and speedy justice should be done in the premises, do hereby strictly and preemptorily command you, the said board of supervisors of Powesheik County, State of Iowa, to forthwith levy a specific tax upon the taxable property of Powesheik County, Iowa, sufficient to pay said judgment of $4,507 80 and costs, taxable at $114 91, and interest at the rate of seven per cent per annum from the 17th day of May, A. D. 1867, and the cost of this proceeding, and when collected to pay and satisfy the same therewith; and make known to our said circuit court at Des Moines, at the court-house in Polk County, on or before the 2d day of the next term of our said circuit court of the United States for the district of Iowa, to be held on the 3d Tuesday of October, A. D. 1868, how you have executed this writ.

33 [SEAL OF THE CIRCUIT COURT OF THE UNITED STATES, DISTRICT OF IOWA.]

Witness the Hon. Salmon P. Chase, Chief Justice of our Supreme Court, and the seal of said circuit court, this 8th day of June, A. D. 1868.

(Signed) W. G. WOODWARD, *Clerk.*

34 And afterwards, to wit, on the 21st day of October, A. D. 1868, the marshal filed in the office of the clerk of the said court a return to the peremptory writ of mandamus in words and figures following, to wit:

35 The writ, of this is a true copy, came into my hands this 8th day of June, 1868, and I served the same on the 22 day of June, 1868, on each of the following-named members of the board of supervisors of Powesheik County, Iowa, to wit: On David Vandever, D. E. Cardell, Horace B. Royce, James Manatt, Daniel Dougherty, Daniel Strong, Charles Fisher, Asher Shifflet, D. J. Wherry, Joseph McDonald, M. A. Malone, A. C. Armstrong, G. J. Morgan, & William English, by reading it and delivering a true copy to each; also, on Erastus Snow, chairman of said board, by reading and delivering to him the original writ. And on the 7th day of Sept. served the same on S. W. Snyder, member of said board, by delivering to him a true copy of said writ. I also served the same on Jno. W. Cheshin, clerk of said board, on the 22d day of June, 1868, by reading it to him, and giving him a true copy thereof; this being all the members of the board of supervisors of said county. All done in the county of Powesheik, Iowa. I exhibited the said original writ to all aforesaid defendants except W. Snyder and Joseph Mc-

36 Donald; and when I served the writ on them I had delivered the original to Erastus Snow, chairman.

G. W. CLARK, *U. S. Marshal*,
By BOWERS, *Deputy*.

Fees:

Service	34
Copies	34
Milage	5 40
	$73 40

37 On this day, to wit, the 23d day of October, in the October term, A. D. 1868, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

UNITED STATES, EX REL. CLARK DURANT,
v.
THE BOARD OF SUPERVISORS OF POWESHEIK COUNTY. } Mandamus.

This day this cause coming on for hearing, and the defendants, by their attorneys, Polk, Hubbell & Barcroft, ask and obtain leave till next term of this court to make return to the peremptory writ of mandamus; and if said return be not sufficient, an attachment to issue, made returnable forthwith.

38 Supreme Court of the United States.

BOARD OF SUPERVISORS POWSHIEK COUNTY,
vs.
UNITED STATES, EX REL. CLARK DURANT. } In error.

Know all men by these presents, that we, the board of supervisors of Powshiek County, Iowa, Erastus Snow, and James C. Savery, are held and firmly bound unto the above-named Clark Durant in the sum of five hundred dollars, to be paid to the said Clark Durant, his executors, or administrators.

To which payment, well and truly to be made, we bind ourselves and

each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 4th day of November, A.D. 1868.

Whereas the above-named board of supervisors of Powshiek County, Iowa, hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the order and judgement rendered in the case in which the said United States, ex rel. Clark Durant, was plaintiff,
39 and the said board of supervisors was defendant, by the circuit court of the United States for the circuit and district of Iowa:

Now, therefore, the condition of this obligation is such, that if the above-named board of supervisors of Powshiek County, Iowa, shall prosecute their said writ of error to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

ERASTUS SNOW, [SEAL.]
Pres't Board of Supervisors Powshiek County, Iowa.
ERASTUS SNOW. [SEAL.]
J. C. SAVERY. [SEAL.]

Approved Nov. 7, 1868.

SAM. F. MILLER, *Judge.*

(Indorsed:) No. 480. Board of Supervisors of Powsheik County, Iowa, *vs.* U. S. ex rel. Clark Durant. Original bond.

Filed Nov. 10, 1868.

W. G. WOODWARD, *Clk.*

40 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court for the circuit and district of Iowa:

Because in the record and proceedings, as also in the rendition of a judgement in a plea which is in the said circuit court before you, between the United States, ex rel. Clark Durant, and the board of supervisors of Powshiek County, Iowa, a manifest error hath happened to the great damage of the said board of supervisors of Powshiek County, Iowa, as by their complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgement be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said
41 Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 30th day of October, A. D. 1868.

[SEAL.] W. G. WOODWARD, *Clk.*

Allowed Nov. 7, 1868.

SAM. F. MILLER, *Judge.*

(Indorsed:) No. 480. Board of supervisors vs. U. S., ex rel. Clark Durant. Writ of error.
Filed Nov. 10, '68. W. G. WOODWARD, *Cl.*

42 UNITED STATES OF AMERICA, *ss:*

To Clark Durant, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the circuit and district of Iowa, wherein the board of supervisors of Powshiek County, Iowa, is plaintiff, and the United States, ex rel. Clark Durant, is defendant in error, to show cause, if any there be, why the judgement in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel F. Miller, one of the justices of the said Supreme Court of the United States, this 7th day of November, in the year of our Lord 1868.

SAM. F. MILLER,
Judge Circuit Court.

This citation came into my hands for service on the 27th day of Nov., 1868, and I served the same on the 28th day of same month, by reading and giving copy to Grant & Smith, att'ys for the within-named Clark Durant, at their office in Davenport, Iowa.

G. W. CLARK,
U. S. Marshal,
By J. S. CLARK, *Dep.*

Marshal's fees:

Mileage	10 80
Service	2 00
Copy	50
Total	$13 30

(Indorsed:) No. 471. Board supervisors Powshiek county vs. U. S., ex rel. Clark Durant. Original citation.
Filed Nov. 10, 1868.

W. G. WOODWARD, *Clk.*

43 DISTRICT OF IOWA, *ss:*

I, W. G. Woodward, clerk of the circuit court of the United States for the district of Iowa, do hereby certify the foregoing transcript, from pages one to thirty-seven, inclusive, to contain a full, true, and perfect copy from the record of all the proceedings of said court in said cause, wherein the United States, ex rel. Clark Durant, is relator, and the board of supervisors of Powesheik County are respondents, as the original of the same now remains in my custody; and I further certify that the writ of error sued out by said respondents in said cause is annexed to the transcript.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Des Moines, in said district, this 9th day of Dec., A. D. 1868.

[SEAL.] W. G. WOODWARD, *Clrk.*

(Indorsed:) U. S. circuit court, dist. of Iowa. The United States, ex

rel. Clark Durant, v. board of supervisors of Poweshiek County. Polk, Hubbell & Barcroft, att'ys for pl't'ff in error.

44 DISTRICT OF IOWA, *ss:*

I, William G. Woodward, clerk of the circuit court of the United States for the district of Iowa, do hereby certify that the foregoing transcript, from pages to , inclusive, to contain a full, true, and perfect copy of all the proceedings of said court in said cause, wherein the United States, ex rel. Clark Durant, was plaintiff, and the board of supervisors of Washington County, Iowa, defendants, as the original of the same now remains in my custody; and I further certify that the writ of error sued out by said board of supervisors of Washington County, plaintiff in error in said cause, is annexed to said transcript.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Des Moines, in said district of Iowa, this 5th day of December, A. D. 1868.

[SEAL.] W. G. WOODWARD, *Clerk.*

(Indorsed:) Circuit court U. S. for the district of Iowa. The United States, ex. rel. Clark Durant, vs. the board of supervisors of Washington County. No. 424. Certificate to transcript and writ of error.

45 In Supreme Court of the United States.

THE BOARD OF SUPERVISORS OF POWSHIEK COUNTY, IOWA,
vs.
U. S., EX REL. OF CLARK DURANT. } In error.

Assignment of errors.

And now comes the plaintiff in error, and says there is manifest error in the record and judgement herein, in this, to wit—

1st. That said court, without disposing of the demurrer of the relator to the return of respondent, issued a peremptory writ of mandamus.

2d. That said court, notwithstanding the return of the respondent, which was sufficient and valid, issued a peremptory writ of mandamus herein.

3d. That said court overruled the motion of the respondent to quash the peremptory writ of mandamus for reasons therein assigned and appearing of record.

4th. That said court overruled the motion of respondent to quash the service of the writ of peremptory mandamus for causes in said motion assigned and appearing of record.

5th. That said court sustained the motion of the relator to enter an order that a writ of attachment issue commanding the of respond-

46 ent for contempt of court.

7th. That said court rendered judgement against said respondents for costs.

For which, and for divers other good and sufficient reasons appearing of record herein, pl'ff in error prays that the order that a writ of attachment issue commanding the arrest and attachment of said respondents be set aside, and the judgement against them be reversed.

POLK, HUBBELL & BARCROFT,
Att'ys for Pl'ff in error.

(Indorsed:) No. 429. Board of supervisors of Powshiek County vs. U. S., ex rel. Clark Durant. Assignment of errors. Filed 12 January, 1869. Polk, Hubbell & Barcroft, att'ys for pl'ff in error.

SUPREME COURT

OF THE UNITED STATES.

DECEMBER TERM, 1869.

THE BOARD OF SUPERVISORS OF POWESHEICK COUNTY, *Plaintiffs in Error,* *vs.* CLARK DURANT, *Defendant in Error.*	*Error to the Circuit Court for the District of Iowa.*

2 v 2

POINTS FOR THE DEFENDANT IN ERROR.

This is another Iowa bond case, and only differs from those already decided in having a different counsel in the Court below.

Clark Durant recovered judgment against Powesheick County in the Circuit Court for Iowa, on the 17th May, 1867, for $4,507 80. Execution was issued on the judgment returned no property. A demand was made to levy taxes to pay the judg-

ments and neglected by defendants. An alternative writ was issued and the defendants returned an answer: That no valid law exists for levy of taxes; officers have no right to do it. That an injunction was issued by a State Court against such levy.

To this the plaintiff demurred, that the State Court could not by any process arrest the levy to pay said judgment; that the plaintiff was no party to the decree, and the decree itself a violation of the Constitution of the United States. The demurrer was sustained and a peremptory writ issued. The defendants asked leave till the next term to make return to the peremptory writ and if return was not sufficient they were to be attached forthwith, and within ten days after this they sued out a writ of error, gave bond and superseded the peremptory writ to pay $4,507 with security for $500, and assign for error—

1. "The Court, without disposing of the demurrer of the plaintiff, issued a peremptory writ."

This is not so; the record says, page 8, "the demurrer was sustained, and the defendants abided by it."

2. "That the Court, though the return was sufficient, ordered the peremptory writ."

3. "That the Court overruled the motion to quash the peremptory writ."

Not a word of this kind is in the record.

5. "That the Court sustained motion to attach, &c."

Why, the defendants agreed to it.

7. "That the Court entered judgment against respondents for costs."

Well, what else should they have done.

This writ is a pure sham. We move the Court to affirm, with such damages as will put a stop to this abuse.

GRANT,

For the Plaintiffs in Error.